

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMIE MCVICKER,)	
)	
Plaintiff,)	
)	Civil Action No. 3:21-cv-70
vs.)	
)	District Judge Stephanie L. Haines
DR. RITA CAMACHO and DANIEL C.)	Magistrate Judge Maureen P. Kelly
VITTONI,)	
)	
Defendants.)	

MEMORANDUM ORDER

This is a civil rights case brought under 42 U.S.C. § 1983 by Jamie McVicker (“Plaintiff”), a prisoner incarcerated at SCI-Houtzdale, alleging that he was denied proper medical care. This matter was referred to Magistrate Judge Maureen P. Kelly for proceedings in accordance with the Federal Magistrates Act, 28 U.S. C. § 636, and Local Civil Rule 72.D.

Plaintiff filed a complaint on July 27, 2021, against Camacho and PrimeCare Medical Inc. [Doc. 12]. In an amended complaint filed on December 30, 2021, Plaintiff eliminated PrimeCare as a defendant and added Vittone as a defendant [Doc. 37]. Camacho timely filed an answer to the amended complaint on January 13, 2022 [Doc. 38]. On April 11, 2022, Judge Kelly ordered the United States Marshal to serve Vittone [Doc. 45]. On July 11, 2022, Plaintiff filed a motion for default judgment against Vittone [Doc. 63]. On July 21, 2022, attorney Michael Hamilton filed a response in opposition to the motion for default, asserting that Vittone passed away on May 23, 2021, before the filing of the amended complaint, in which he first was named as a defendant [Doc. 66].

On September 20, 2022, Judge Kelly issued a Report and Recommendation (“R&R”) recommending that the motion for default judgment be denied [Doc. 71]. Plaintiff was notified

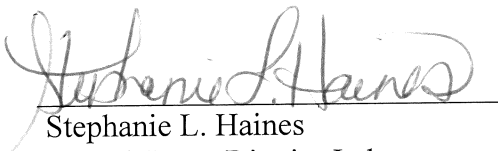
that he had fourteen days from the date of the R&R to file written objections. *See* 28 U.S.C. § 636 (b)(1)(B) and (C) and Local Civil Rule 72.D.2. To date, Plaintiff has not filed any written objections to the Report and Recommendation, and the time to do so has expired.

Upon review of the record and the Report and Recommendation under the applicable “reasoned consideration” standard, *see EEOC v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (standard of review when no timely and specific objections are filed), and pursuant to Local Civil Rule 72.D.2, the Court will accept in whole the findings and recommendations of Judge Kelly in this matter. Taking judicial notice of public records showing that Vittone pre-deceased the filing of Plaintiff’s amended complaint, Judge Kelly determined that Vittone did not have the capacity to be sued, and that he could not have been properly served. Accordingly, Judge Kelly correctly found that the entry of a default judgment against such an individual who cannot be sued and was not properly served would be improper.

Accordingly, the following order is entered:

ORDER OF COURT

AND NOW, this 18th day of October, 2022, for the reasons set forth in Magistrate Judge Kelly’s Report and Recommendation [Doc. 71], which hereby is adopted as the opinion of the Court as supplemented herein, IT IS ORDERED that Plaintiff’s motion for default judgment against Defendant Daniel C. Vittone [Doc. 63] hereby is **denied**.


Stephanie L. Haines
United States District Judge